

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFF WONDERLEY

Appeal No. 2001-1772
Application No. 09/059,699

ON BRIEF

Before ABRAMS, FRANKFORT, and McQUADE, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-14, 16-22 and 24-26. Claims 15, 23 and 27-29 have been allowed, and claim 30 has been indicated as containing allowable subject matter.

We REVERSE.

BACKGROUND

The appellant's invention relates to a razor cartridge. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Booth	4,170,821	Oct. 16, 1979
Ferraro	5,666,729	Sep. 16, 1997

Claims 1-14, 17-22 and 24-26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ferraro.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferraro in view of Booth.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 21) and the final rejection (Paper No. 17) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 20) and Reply Brief (Paper No. 23) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

In the opening pages of the specification, the appellant explains that in multiple blade wet shavers a plurality of small razor blades are mounted within a small cartridge, and that these blades must be mounted in such a fashion as to give firm support to the blades while providing flow channels through the blade cartridge to allow debris to be flushed therefrom. According to the appellant, the blades must be resiliently mounted in order to provide a close shave while minimizing injury to the person shaving. The appellant's invention is directed to improvements in such razor cartridges and comprises a platform member supporting a first blade and a spacer member supporting second and third blades above the first blade, with spaces being provided between the three blades. Throughout the specification, and with regard to all of the embodiments, the appellant has explained the invention in terms of comprising a platform member that is separate from the spacer member.

The Rejection Under Section 102

The guidance provided by our reviewing court with regard to the matter of anticipation is as follows: Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that may be possessed by the reference. See Verdegaal Brothers Inc. v. Union Oil Co. of California, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellant's claim 1 reads as follows:

1. A razor cartridge comprising:

a platform member;

a first blade placed on said platform member;

a spacer having a base portion with an upper surface and a lower surface;

a second blade; and

a third blade,

wherein said base portion of said spacer is positioned between said first blade and said second blade such that said lower surface is disposed on said first blade and said upper surface supports said second blade, said spacer having at least one protrusion member extending above said upper surface supporting said third blade, said spacer being in a fixed relationship to said platform member.

The examiner is of the view that all of the subject matter of claim 1 finds correspondence in the Ferraro razor cartridge which, as shown in Figure 3, comprises three blades that are held in place by a plurality of support members 80. In order to arrive at this conclusion, the examiner has taken the position that the appellant's claims do not require that the platform member and the spacer be separate elements, and has carved the Ferraro support members into portions and labeled these portions as the "platform member" and the "spacer" recited in the claims (see Paper No. 17, page 2). The appellant argues that the claim should not be interpreted in such a manner, and that Ferraro fails to disclose all of the subject matter recited in the claim in that it does not have a separate platform member and support. We agree with the appellant's conclusion that Ferraro does not anticipate claim 1. Our reasoning follows.

We first note that Ferraro was cited on page 3 of the appellant's specification as an example of the prior art over which the appellant considered his invention to be an improvement. Ferraro is described as disclosing a plurality of resilient supports each of

which support all of the three blades, an arrangement that the appellant considers to be disadvantageous because either a large number of supports must be used to achieve adequate stability or the supports must themselves be large, both of which limit the size of flow paths through the cartridge. From our perspective, since the appellant acknowledges the existence of the Ferraro cartridge, it is reasonable to presume at the outset that he intends for his claims not to read upon it.

While claim 1 does not explicitly state that the platform member is “separate” from the spacer, it is our opinion that the language of the claim 1 is such that, when considered in the light of the appellant’s disclosure, it should be interpreted to limit the claim to a cartridge in which the platform member is an element separate from the spacer. This is the interpretation that the appellant intended to be applied to the claims, as is evident from the arguments in the Briefs. Moreover, as also is pointed out by the appellant, such an interpretation is consistent with the manner in which these elements are presented in claim 1. In this regard, claim 1 recites “a platform member and a first blade placed on said platform member” (emphasis added), which we agree indicates that the platform member is a separate element, in and of itself. The claim goes on to recite “a spacer having a base portion . . . positioned between said first blade and said second blade . . . said spacer having at least one protrusion . . .” (emphasis added), which we agree supports the

conclusion that the spacer is separate from the platform member, and it is a portion of the spacer that is positioned between the first and second blades.

It therefore is our opinion that a fair reading of claim 1 on the basis of the explicit language recited therein taken in the light of the specification leads to the conclusion that claim 1 requires the presence of platform member that is separate from the spacer. This being the case, the structure disclosed by Ferraro does not meet the terms of the claim, and we will not sustain the anticipation rejection of claim 1 or, it follows, of dependent claims 2-9.

Independent claim 10 sets forth the invention in more detail, but still contains the language we focused on above regarding the platform member and the spacer. The rejection of this claim and of dependent claims 11-14, 17-22 and 24-26 is not sustained for the same reasons as were expressed above with regard to claim 1 et.al.

The Rejection Under Section 103

Claim 16, which depends from claim 10, stands rejected as being unpatentable over Ferraro in view of Booth, the latter being cited for its teaching of providing a lubricating applicator on the cap member of a shaving cartridge.

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller,

642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Considering Ferraro in this light does not alter our conclusion that it does not disclose or teach the subject matter recited in claim 10, in that we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to modify Ferraro by providing a separate platform member and spacer. Further consideration of Booth does not overcome this deficiency.

The combined teachings of Ferraro and Booth fail to establish a prima facie case of obviousness with regard to the subject matter of claim 16, and we will not sustain the rejection.

SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

NEAL E. ABRAMS
Administrative Patent Judge

CHARLES E. FRANKFORT
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

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APJ ABRAMS

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APJ McQUADE

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 20 Sep 02

FINAL TYPED: